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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Sixteenth session

SUMMARY RECORD OF THE 22nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 14 May 1997, at 10 a.m.

Chairperson: Mr. ALSTON

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SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (continued)

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The meeting was called to order at 10.05 a.m.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 5) (continued)

Draft general comment on forced evictions (continued) (FUTURE E/C.12/1997/4)

Paragraph 3 (continued)

1. Mr. AHMED and Mr. PILLAY proposed that the phrase "of the right to housing" should be inserted after the words "adequate protection" in the third sentence.

2. Mr. AHMED proposed that the phrase "except in circumstances of legality and conformity with the purposes of the Covenant" should follow the words "forced evictions".

3. Mr. WIMER proposed, in the interests of brevity, that the term "illegal" should instead be added to the words "forced evictions".

4. Mr. PILLAY wondered whether it would be advisable to change the definition of forced evictions given at the end of the paragraph.

5. Mr. AHMED said he believed the text should differentiate between legal and illegal evictions whenever reference was made to forced evictions.

6. Mr. RIEDEL emphasized the need to adopt a definition of forced evictions which would be consistent with the definition used by other treaty bodies.

7. In response to the points made by Mr. Riedel and Mr. Pillay, the CHAIRPERSON suggested that the paragraph should be amended with the sentence: "The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the Covenant".

8. Mr. WIMER accepted that proposal, but said he considered that it would be preferable to use the term "illegal", as the prohibition did not apply to the forced evictions, but rather to the conditions in which they were carried out.

9. The CHAIRPERSON, supported by Mr. SA'DI and Mr. PILLAY, said he believed that systematic use of the term "illegal" would be clumsy and that it would be preferable, whenever there was any doubt, to add the phrase "as defined in paragraph 3 above" in parentheses after the term "forced evictions".

10. In response to the suggestion by Mr. Pillay, the CHAIRPERSON, supported by Mr. TEXIER, proposed that the following new paragraph 3 bis should be added: "The term 'forced evictions' as used throughout this general comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes or lands which they occupy without provision of and access to appropriate forms of legal or other

protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the Covenant".

11. The Chairperson's suggestion was adopted.

Paragraph 7 (continued)

12. Mr. WIMER proposed that the phrase "who have recourse to forced evictions" should be deleted from the fourth sentence of the paragraph.

13. Mr. AHMED supported that proposal, as it obviated the need to specify whether such recourse to forced evictions was legal or illegal.

14. Mr. PILLAY replied that reference should be made to the definition of forced evictions in paragraph 3. If the evictions were carried out in accordance with the law and in conformity with the provisions of the Covenant, they were legal.

15. Responding to a suggestion made by Mr. GRISSA, the CHAIRPERSON suggested that the phrase should be modified to read: "The State itself must refrain from forced evictions (as defined in paragraph 3 above) and ensure that the law is enforced against its agents or third parties".

16. Paragraph 7, as orally amended, was adopted.

Paragraph 8

17. The CHAIRPERSON said that, if there were no objections, he would take it that the Committee wished to maintain the third sentence of paragraph 8 as it stood, subject to editorial changes being made by the Secretariat and on the understanding that the different language versions would be brought in line with the English original.

18. It was so decided.

Paragraph 9

19. Mr. WIMER said he found the wording of the first sentence confusing, and proposed, with the support of Mrs. JIMENEZ BUTRAGUEÑO, that it should be changed to read "Minorities and groups without formal security of tenure ...".

20. Mr. SA'DI said he thought only minor changes should be made to the paragraph, so as to maintain the basic idea therein.

21. The CHAIRPERSON said that it appeared a consensus was emerging in favour of wording the first sentence of paragraph 9 in the following manner: "Women, children, youth, older persons, indigenous people, ethnic and other minorities and other vulnerable individuals and groups all suffer disproportionately from the practice of forced evictions".

22. The first sentence of paragraph 9, as amended, was adopted.

23. Mr. WIMER proposed that the end of the second sentence "or rights of access to ... homeless" should be deleted.

24. Mrs. JIMENEZ BUTRAGUEÑO supported the proposal, provided that the concept of "property rights" would be qualified by adding the words "and the right of women to possess or enjoy accommodation" so that a distinction would be made between property on the one hand and possession of rented accommodation on the other.

25. The CHAIRPERSON suggested that after the words "in relation to property rights" the phrase "including home ownership" should be inserted.

26. It was so decided.

27. Mrs. JIMENEZ BUTRAGUEÑO, supported by Mr. RIEDEL, proposed that the phrase "and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless" should be maintained.

28. Mr. RIEDEL said he found it surprising that the sentence referred to "some countries".

29. Mr. TEXIER, in order to avoid the reference to "some countries", proposed that the second sentence should be worded: "Women are especially vulnerable given the statutory and other forms of discrimination which often apply in relation to property rights ... and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless".

30. The second sentence of the paragraph, as orally amended, was adopted.

Paragraph 10

31. After an exchange of views in which Mr. Sa'di, Mr. Wimer, Mr. Pillay and the Chairperson took part, it was decided that the paragraph should not be amended.

Paragraph 11

32. Paragraph 11 was maintained without change.

Paragraph 12

33. Mr. MARCHAN ROMERO proposed that the words: "Where eviction is claimed to be necessary" at the beginning of the paragraph should be replaced by the words: "In cases where eviction is justifiable".

34. Mr. GRISSA asked that the words "est jugée" in the French version should be changed.

35. The CHAIRPERSON suggested the wording: "In cases where eviction is considered to be justified".

36. The proposal was adopted.

37. Paragraph 12, as amended, was adopted.

Paragraph 13

38. Mr. CEVILLE proposed that clauses (a) to (f), in the second sentence of the Spanish version, should begin with nouns, to bring it into line with the English and French versions.

39. Mr. TEXIER suggested that the words "or due process" in the first sentence should be replaced by "and due process", as procedure and due process would both have to be observed.

40. The CHAIRPERSON said that, if there were no objections, he would take it that the Committee wished to adopt paragraph 13, as orally amended.

41. It was so decided.

Paragraph 14

42. Mr. MARCHAN ROMERO said he believed there was a contradiction between the beginning and the end of the first sentence. It was impossible to speak of forced evictions if the authorities were supposed to avoid using force. It might be advisable to change the wording.

43. The CHAIRPERSON suggested that the end of the first sentence, following the words "those involving large groups", should be changed to read: "States parties shall spare no effort to avoid having to use force".

44. Mr. GRISSA suggested replacing the phrase "with a view to avoiding, or at least minimizing, the need for" by "with a view to minimizing the consequences of".

45. Pointing out that the two concepts were not the same, the CHAIRPERSON suggested that the end of the sentence should be worded: "with a view to avoiding, or at least minimizing, the need to use force".

46. Mr. GRISSA said he believed it would be preferable to state "with a view to avoiding, or at least limiting, the use of force".

47. With regard to the first sentence, Mr. TEXIER said he thought it would be desirable to emphasize the fact that the States parties should first seek solutions before opting for eviction, and thus proposed to modify the sentence, suggesting for example, the wording: "States parties must consider all possible solutions before proceeding with any evictions". He added that it would perhaps be advisable to refer to consultation between the authorities and the population groups concerned.

48. The CHAIRPERSON invited Mr. Texier to reword the sentence and present it to the Committee members later.

49. Mr. RIEDEL suggested that the word "recourses" in the second sentence of the English version should be replaced by "remedies", as "recourses" and "procedures" represented exactly the same concept in English.

50. Mr. TEXIER proposed that only the term "recours" should be maintained in the French version, as it meant an appeal procedure, and the words "recours" and "procédures" were nearly redundant.

51. The CHAIRPERSON said he thought the best solution would be to maintain "recours" in the French version and to delete the term "recourses" from the English version.

52. Drawing attention to the fact that paragraph 14 covered all types of evictions, including legal ones, Mr. SA'DI asked for some clarification on the meaning of the third sentence in the case of legal evictions.

53. Replying to Mr. Sa'di, Mr. PILLAY said that any eviction, legal or not, could give rise to compensation if the property of the person concerned was damaged when that person was evicted.

Paragraph 15

54. Mr. MARCHAN ROMERO said he believed it would be preferable to replace the words "no indigent person" in the second sentence by the more general term "no one".

55. Drawing attention to the fact that paragraph 15 too covered all forms of eviction, Mr. SA'DI wondered whether, in cases of legal eviction, States parties would have to ensure that alternative housing would be provided.

56. The CHAIRPERSON said that it would be desirable to study the question in more detail to determine the responsibility of States parties in cases of legal eviction.

57. Mr. PILLAY said the term "no one" was too general, and that the emphasis should be placed on persons facing hardship, whose other rights would be jeopardized as a consequence of eviction.

58. With regard to the first sentence, the CHAIRPERSON said that the term "provided" should be replaced by "made available", in order to indicate clearly that the State party need only intervene as a last resort.

59. Mr. GRISSA agreed with Mr. Marchan Romero that the words "no indigent person" should be replaced by "no one", as it was difficult to define the criteria of poverty, and proposed that the sentence should be reworded: "It must also ensure that no one who has been evicted will be rendered homeless or made vulnerable to a violation of his or her other rights".

60. Mr. SA'DI said he felt the emphasis in paragraph 15 should be placed on the financial situation of the evicted persons, without regard to their gender.

61. Mr. RIEDEL suggested that the beginning of the second sentence should be changed to: "The State party must also take all appropriate measures to ensure that no one", with the rest of the sentence remaining unchanged.

62. The CHAIRPERSON suggested, in view of the observations made by the Committee members, that paragraph 15 should be reworded in the following manner: "Evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that alternative housing, resettlement or access to productive land, as the case may be, is available".

63. Paragraph 15, as amended, was adopted.

Paragraph 14 (continued)

64. Mr. TEXIER asked that the Committee should revert to paragraph 14, and proposed that the first sentence be recast to read: "States parties should consider all possible solutions, in consultation with the affected persons, particularly when large groups are involved, before carrying out any evictions". He considered it important to introduce the idea of consultation.

65. Mr. PILLAY said that the main concept in paragraph 14 was the need to avoid or limit the use of force, an idea that did not appear in the new wording proposed by Mr. Texier. He therefore proposed the sentence: "States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with affected persons, with a view to avoiding, or at least minimizing, the need to use force".

Paragraph 16

66. Mr. CEVILLE said he thought it would be more logical to include the two main ideas of paragraph 16, namely the legal remedies available and the provision of legal aid, in paragraph 13. He therefore proposed that paragraph 16 should be deleted, and that two clauses (g) and (h) should be added to paragraph 13:

> "(g) Remedies or procedures must be made available to individuals whose property rights or rights to occupy land or housing are challenged;
>
> (h) Legal aid must be provided where possible to persons who are in need of it to obtain compensation through the courts."

67. Mr. TEXIER, like Mr. Marchan Romero, agreed with Mr. Ceville's proposal, and particularly the deletion of the term "basic" with reference to legal remedies or procedures.

68. Mr. PILLAY said that he thought paragraph 13 was already long enough, and that adding the two clauses (g) and (h) would only make it more cumbersome. He said he would prefer that paragraph 16 should become paragraph 14, with the other paragraphs being renumbered accordingly.

69. Mr. WIMER pointed out that even if Mr. Ceville's proposal tended to make paragraph 13 cumbersome, it was still logical. He agreed with Mr. Texier on

the deletion of the word "basic", and proposed that in the Spanish version the adjective "letrada" should be replaced by "jurídica", which was more appropriate.

70. After an exchange of views in which Mr. Texier, the Chairperson and Mr. Ceville took part, it was decided to adopt the text proposed by the latter.

Paragraph 17

71. Mr. GRISSA asked why reference was made to international agencies. Not all major projects were funded by such bodies. In Malaysia, for instance, the construction of a large dam for a hydro-electric project had been by the private sector.

72. The CHAIRPERSON said that the World Bank, UNDP and other international agencies had themselves drawn up guidelines for their roles in several major infrastructure projects. He also pointed out that articles 22 and 23 of the Covenant referred to international cooperation and the specialized agencies. He recognized, however, that the word "condemns" at the beginning of the second sentence in the paragraph should not be used.

73. Mr. SA'DI said that the aim of paragraph 17 was to emphasize the role of international agencies. The Committee had every reason to do so, as it was responsible for coordinating its activities with those of such bodies.

74. Mr. MARCHAN ROMERO agreed that the word "condemns" was too strong, and proposed to replace it with the word "deplores".

75. The CHAIRPERSON suggested that the Committee should simply recall its General Comment No. 2, and thus avoid expressing a value judgement which could detract from the real objective of the paragraph.

76. Mr. GRISSA said he found it paradoxical that the Committee sought to promote the development of poor countries while at the same time condemning the international agencies which helped them do so.

77. The CHAIRPERSON said that the Committee supported the activities of the international agencies, and hoped for the development of all countries, but that did not mean that it would have to take place at the expense of large population groups. The World Bank itself had recognized that the implementation of major infrastructure projects should not entail the violation of human rights.

78. Mr. GRISSA pointed out that all major projects involved forced evictions, and that you could not make an omelette without breaking eggs.

79. Mr. TEXIER said that since the word "condemns" had been deleted, it was a moot point.

80. The CHAIRPERSON suggested that the words "condemns such a state of affairs" should be deleted from the second sentence of the paragraph, and that paragraph 17 should be adopted as amended.

81. It was so decided.

Paragraph 18

82. Mr. GRISSA said he did not understand the usefulness of paragraph 18, which, he said, practically repeated paragraph 17.

83. The CHAIRPERSON replied that the objective of the paragraph was to urge the international agencies to respect their own guidelines. He suggested that the paragraph should be adopted without change.

84. It was so decided.

Paragraph 19

85. Mr. MARCHAN ROMERO proposed that the first sentence of the paragraph should be modified to read: "The guidelines adopted by the Committee for reporting request States parties to provide information pertaining directly to the practice of forced eviction".

86. Mr. PILLAY proposed that in order to avoid repetition of the word "information", the second sentence should be worded to read: "This includes information relating to (a) the number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction, (b) legislation concerning the rights of tenants to security of tenure, to protection from eviction ... and (c) legislation prohibiting any form of eviction.

87. It was so decided.

Paragraph 20

88. Mr.GRISSA proposed that the term "World Fairs" should be replaced by the word "exhibitions" in the English version.

89. It was so decided.

Paragraph 21

90. The CHAIRPERSON, noting that the Committee had no observations concerning the paragraph, proposed that the draft general comment should be adopted as amended.

91. It was so decided.

92. Mr. TEXIER said that in view of the mission the Committee had decided to send to the Dominican Republic, it would be important to have a copy of the document available, if only in one language.

93. The CHAIRPERSON said that the necessary arrangements would be made and thanked Mr. Pillay for his assistance in recasting the general comment.

The meeting rose at 1 p.m.